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5 STORZ PERFORMANCE, INC.

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8 **UNITED STATES DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
9

10 STORZ PERFORMANCE, INC.,
a California corporation,

11 Plaintiff,

12 vs.

13 MOTO ITALIA, form unknown;
LESLIE BULL, an individual;
14 CYCLE PERFORMANCE
PRODUCTS, INC.; JOHN BASORE,
15 an individual, and, DOES 1 to 100,
Inclusive,

16 Defendants.
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Case No. 3:07-CV-02242 W (WMC)

DATE: September 15, 2008

TIME: 10:30 a.m.

COURT: Courtroom No. 7
Honorable Thomas J. Whelan

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21 **DECLARATION OF**
STEVE STORZ, ON BEHALF OF
22 **STORZ PERFORMANCE, INC.**
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26 Honorable Thomas J. Whelan
United States District Court Judge

27 Honorable William McCurine, Jr.
28 United States Magistrate Judge

1 I, STEVE STORZ, do state and declare as follows:

2 1. I am the president of Storz Performance, Inc., the Plaintiff in the above entitled action
3 I have personal knowledge of the following, and if called upon to testify, I could and would testify
4 competently thereto.

5 2. I have read the Memorandum of Points and Authorities In Support of Motion for
6 Preliminary Injunction, The facts stated therein are true to the best of my knowledge and belief.

7 3. Storz Performance, Inc., is a California corporation engaged in the business of selling
8 motorcycle accessories, including motorcycle suspension systems.

9 4. Commencing in 1985, Storz Performance, Inc. sold motorcycle suspension systems
10 and related products under the name Ceriani. Storz Performance, Inc. has continuously used the
11 name Ceriani in conjunction with the sale of its motorcycle suspension systems and related products,
12 and has continuously advertised and marketed the Ceriani name for motorcycle suspension systems
13 and related products for some twenty three (23) years. The name Ceriani identifies the Storz
14 Performance, Inc. product in the marketplace.

15 5. Storz Performance thereafter filed for a California state trademark for the Ceriani
16 mark, which California mark issued to Storz.

17 6. Storz Performance subsequently, in 1994, filed a trademark application with the U.S.
18 Patent & Trademark Office for the trademark Ceriani, for use in conjunction with motorcycle
19 suspension systems.

20 7. The U.S. Patent & Trademark Office issued Trademark Registration No. 1,927,816
21 to Storz Performance, Inc. for the trademark, Ceriani®. The trademark was registered on the Principal
22 Register in Class for use in conjunction with motorcycle suspension systems. Reference is made to
23 Exhibit 1, filed with this Motion.

24 8. In October 2001, the U.S. Patent & Trademark Office granted the Storz Performance,
25 Inc., Ceriani® trademark Incontestable Status.

26 9. Defendants have been, and are, using the Storz trademark Ceriani® in conjunction
27 with the solicitation for sale and or sale of motorcycle products, namely, motorcycle suspension
28 systems, Reference is made to Exhibit 2, filed with this Motion, a true and correct copy of active

1 internet/website marketing and sales. Exhibit 2(a) is a September 2007 internet site copy, and
2 Exhibit 2(b) is a July 2008 internet site copy

3 10. As shown, Moto Italia/Bull and Cycle Performance/Basore market products under
4 the “Ceriani” name together on the same website. As further shown, Defendants have changed the
5 website since the lawsuit, but continue to market and sell products using the “Ceriani” mark, which
6 mark belongs to Storz Performance.

7 11. None of the Defendants have consent from Storz to use the Storz registered trademark
8 Ceriani®.

9 12. To the contrary, I spoke to the Defendant on more than one occasion to inform them
10 that I believed they wrongfully using the Storz Ceriani® trademark. The Defendants nonetheless
11 continued to deliberately use the Storz mark thereafter, and continue to deliberately, intentionally
12 and wrongfully use the mark to this day.

13 13. Defendants are creating confusion in the marketplace with respect to the Ceriani®
14 motorcycle suspension systems and related products. Our company has received telephone calls from
15 end users/purchasers concerning Ceriani motorcycle suspension systems. On investigation, the
16 people had purchased the suspension system from sources other than Storz, *i.e.*: from Defendants,
17 but because of the Storz trademark Ceriani® and its recognition as a Storz Performance product, said
18 persons contacted Storz.

19 14. Storz has spent over twenty three years (since 1985) of time, expense and money
20 building up the recognition factor and goodwill of the Ceriani® trademark in the minds of the public
21 with regard to motorcycle suspension systems and related products. The market for such speciality
22 products, although not extremely large, is a crowded arena. Trademark recognition is essential in the
23 marketplace for Storz to compete and succeed, as it has done for many years. The Ceriani® trademark
24 is one of long and continuous use, and as intended, it has become recognized in the marketplace for
25 quality product.

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1 I, the undersigned, do declare that I am employed in the county aforesaid; that I am over the
2 age of eighteen [18] years and not a party to the within entitled action; and that I am executing this
proof at the direction of a member of the bar of the above entitled Court. The business address is:

3 GILLASPEY & GILLASPEY
4 The NBC Tower, 225 Broadway, Suite 2220
San Diego, California 92101

5 ☒ MAIL. I am readily familiar with the business' practice for collection and processing
6 of correspondence for mailing via the United States Postal Service and that the correspondence
would be deposited with the United States Postal Service for collections that same day.

7 ☐ FACSIMILE. I am readily familiar with the business' practice for collection and
8 processing of correspondence for electronic transmission and that the correspondence was
successfully transmitted by facsimile that same day in the ordinary course of business.

9 ☐ OVERNIGHT. I am readily familiar with the business' practice for collection and
10 processing of correspondence for overnight delivery/receipt next day via a major carrier such as UPS,
FED EX, DHL or similar carrier, and same were deposited that same day.

11 ☐ ELECTRONIC. I am readily familiar with the business' practice for collection and
12 processing of documents via its electronic (e-mail) system and said documents were successfully
transmitted via e-mail that same day.

13 ☐ PERSONAL. The below described documents were personally served that day.

14 On the date indicated below, I served the within:

15 Notice of Motion (Rule 55)
16 Memorandum of Points & Authorities
17 Storz Declaration
Gillaspey Declaration & Exhibits
[Proposed] Judgment

18 The above documents were served as set forth above and addressed as follows:

19 Leslie Bull	John Basore
20 MOTO ITALIA	CYCLE PERFORMANCE PRODUCTS
21 1060 Petaluma Blvd. N.	2724 Spring Garden Road
Petaluma, CA 94952	Winston-Salem, NC 27106

22 I declare under penalty of perjury, under the laws of the United States, that the foregoing is
true and correct and was **EXECUTED** on July 23, 2008 at San Diego, California.

23 /s/ NICOLE HARRIS
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